IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:	
MARK J. CUYLER	Chapter 7 Case
Debtor	Number 287-00412
MARK J. CUYLER	
Movant	
v.	
GEORGIA POWER COMPANY	
Respondent	

FILED
at 10 O'clock & 40 min. A M
Date 7/18/88
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

MEMORANDUM AND ORDER ON MOTION FOR CONTEMPT

Movant, a Chapter 7 pro se debtor, alleges that Georgia Power Company ("Georgia Power") is in contempt of this Court for its alleged violation of the automatic stay. After consideration of the evidence heard at the hearing on May 17, 1988, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) On September 4, 1987, Debtor filed a pro se Chapter 7 petition with the Clerk of this Court. In accordance with the address given by the Debtor a notice of the filing of his bankruptcy was sent to Georgia Power Company, 96 Annex, Atlanta, Georgia, 30396. No notice was sent to the local Georgia Power office in Kingsland, Georgia. The notice was received in Atlanta and presumably forwarded to Macon from where it was to be forwarded on to Kingsland, but for reasons unknown it was never received in Macon nor in Kingsland.

2) On September 22, 1987, the Debtor and his friend, Della Holmes, went to the Georgia Power office in Kingsland where he paid $30.00 for what he asserts to have been post-petition service. The Debtor testified under oath that he carried a certified copy of his bankruptcy petition with him to the Kingsland office and tried to open a new account in compliance with 11 U.S.C. Section 366(b).[1] Georgia Power disputed the Debtor's version of events and contends that no

[1] 11 U.S.C. Section 366(b) provides: "Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date . . . "

actual proof of bankruptcy was supplied to it until November 24, 1987.[2]

3) Prior to the November 19, 1987, disconnection of the Debtor's electric services, the Debtor was two months delinquent, the meter had been read for a third time, and a notice of intent to disconnect had been sent on November 13, 1987. The Debtor made no response to the intent to disconnect notice. Debtor's electric service was cut-off on Thursday, November 19, 1987, and the Debtor went to the Kingsland office on Friday, November 20, 1987. The Debtor demanded that his service be restored. The electric company responded that its policy requires proof that he had filed bankruptcy. Notwithstanding Georgia Power's policy, on November 20, 1987, Georgia Power reconnected the Debtor's power out of an abundance

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[2] A resolution of the actual notice question is not critical to reaching a determination of the issue before me, therefore, I decline to adopt either version of events. Nonetheless, it disturbs me that Georgia Power maintains a policy which requires written proof from the debtor that he is in bankruptcy before it will forego collection efforts as to pre-petition debt. The case law is clear that such a policy will not insulate a creditor from contempt sanctions or liability under 11 U.S.C. Section 362(h). In re Blair, Adv.No. 187-0039 (Bankr. S.D.Ga. February 11, 1988); In re Bragg, 56 B.R. 46 (Bankr. M.D.Ala. 1985); In re Newman, 53 B.R. 7 (Bankr. M.D.Tenn. 1985); In re Behm, 44 B.R. 811 (Bankr. W.D.Wis. 1984).

of caution and left him a note to turn on the breaker switch. On Monday, November 23 1987, the Debtor contacted the Georgia Power office and was informed that his power had been restored and all he had to do was turn on the breaker. On November 24, 1987, the Debtor brought proof that he had filed the bankruptcy to Georgia Power.

4) After the Debtor filed his petition on September 4, 1987, he owed Georgia Power the following amounts:

$41.90	-	for service through September 22, 1987
$45.18	-	for service through October 21, 1987
$40.58	-	for service through November 19, 1987

Out of a total of $127.66 owing post petition, the Debtor made only one $30.00 payment on September 22, 1987, leaving $97.66 owed post petition.[3]

[3] In this regard, Debtor appears to misconceive the effect of the filing of his Chapter 7 case. The effect of that filing is to discharge his personal liability for much if not all of the debts he owed pre-petition, that is on the date of filing. However, Debtor is not relieved of his debts incurred post petition, that is, after the date of his filing.

CONCLUSIONS OF LAW

Under 11 U.S.C. Section 362 the filing of a petition operates as a stay enjoining the commencement or continuation of a judicial, administrative, or other action or proceeding against the debtor to recover pre-petition debts. 11 U.S.C. Section 366(a) provides that:

> "Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to . . . the debtor . . . [for] a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due."
> (Emphasis added).

The statutory prohibitions contained in 11 U.S.C. Section 366(a) are expressly made subject to the protections afforded to utilities by 11 U.S.C. Section 366(b). These protections include the right of a utility to "alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date." The 20 days afforded to the Debtor began to run as of September 4, 1987 and expired September 24, 1987.[4] The Debtor's payment of $30.00 on

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[4] 11 U.S.C. Section 301 provides that the filing of a voluntary petition constitutes an order for relief.

September 22, 1987 against an outstanding post petition debt of $41.90 does not constitute adequate assurance within 20 days as contemplated by 11 U.S.C. Section 362(b). Georgia Power was well within its rights to disconnect the Debtor's electric service at any time after September 24, 1987. See: Lloyd v. Champaign Telephone Co., 52 B.R. 653 (Bankr. S.D. Ohio 1985); In re Dandi-Line Plants, Inc., 27 B.R. 868 (Bankr. N.D.Ala. 1983); In re Stagecoach Enterprises, Inc., 1 B.R. 732 (Bankr. M.D.Fla. 1979). Accordingly, the Debtor's Motion for Contempt is denied.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that the Motion for Contempt Sanctions against Georgia Power Company is denied and dismissed.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 15th day of July, 1988.